

M E M O R A N D U M

TO: BDAC Water Transfers Work Group

FROM: Michael G. Heaton

DATE: March 10, 1998

SUBJECT: CVPIA Water Transfer Provisions

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At the February meeting of the BDAC Water Transfers Work Group, participants asked staff to prepare a summary of the provisions governing water transfers under the Central Valley Project Improvement Act (CVPIA), enacted in 1992. This memo is in response to that request.

A. Section 3405(a) provides that anyone who receives water from the Central Valley Project (CVP) is authorized to sell all or a portion of such water, subject to certain conditions as summarized below:

1. All transfers are subject to review and approval by the Secretary of the Interior. Transfers involving more than 20 percent of the CVP water subject to a CVP contract shall also be subject to review and approval by the contracting District or agency.

2. The amount transferred may not exceed, in any one year, the annual average of the amount actually delivered during the last three years of normal water delivery prior to enactment of the CVPIA.

3. Water transferred to a district or agency which is not a CVP contractor shall be paid for at the higher of the cost of service or full cost rate (for irrigation water) or the higher of the cost of service or the municipal and industrial (M&I) rate (for M&I water.)

4. Transfers shall be between willing buyers and willing sellers on mutually agreed upon terms.

5. Transfers shall be consistent with state law including CEQA.

6. Transfers are deemed a beneficial use of water under the federal reclamation law (Section 8 of the 1902 Act).

7. A transfer for use of water outside the CVP service area is subject to a 90 day right of first refusal, on the same terms and conditions as the proposed transfer, by entities within the CVP service area. If exercised, the first party must be compensated.

8. A transfer does not create a new or supplemental benefit as defined under Section 203 of the Reclamation Reform Act of 1982.

9. The Secretary shall not approve a transfer in the absence of a determination that the transfer will not violate other provisions of the CVPIA or other federal law, and will have no significant adverse affect on the ability to meet other CVP contractual obligations or fish and wildlife obligations, because of limitations in conveyance or pumping capacity.

10. The water subject to transfer is limited to water that would have been consumptively used or irretrievably lost to beneficial use during the year(s) of the transfer.

11. The Secretary shall not approve a transfer in the absence of a determination that the transfer will have no significant long term adverse impact on groundwater conditions in the transferor's service area.

12. The Secretary shall not approve a transfer in the absence of a determination that the transfer will not have an unreasonable impact on the water supply, operations, or financial conditions of the transferor's contracting district or agency or its water users.

13. The Secretary shall not approve a transfer if it is determined that the transfer would result in a significant reduction in the quantity or decrease in the quality of water supplies currently used for fish and wildlife purposes unless the benefits of the transfer outweigh the impacts, in which the transfer must include mitigation measures.

14. Transfers between CVP contractors within counties, watersheds, or other areas of origin, as defined in California law, shall be deemed to meet the conditions described in Paragraphs 2 and 10 above.

15. The agency and Secretarial decisions on a water transfer must be made within 90 days from the date the transfer is received from the proponent.

16. In its review of a proposed transfer, an agency or district must provide public notice and opportunity for public comment.

17. The agency or district and the Secretary must approve a transfer if it is consistent with the conditions of Section 3405(a). To disapprove a transfer, the Secretary or agency or district must explain in writing why the transfer does not meet the conditions of Section 3405(a) and how the transfer could be structured so that it would satisfy the conditions.

18. Failure to act within 90 days is deemed approval.

19. Transfers executed after September 30, 1999, are not subject to the conditions described in Paragraphs 5, 7, 11, and 12 above.

B. In February of 1993, the Bureau of Reclamation issued interim guidelines for the implementation of the CVPIA water transfer provisions. The guidelines provide more detailed explanation of the conditions described in Section 3405(a). The interim guidelines will remain in effect until such time as the Bureau issues final rules and regulations for CVPIA implementation.

C. In June of 1996, the Department of Interior issued a draft administrative proposal for resolution of the CVPIA water transfers issued identified through the "Garamendi Process". The draft paper identified 22 specific issues which were grouped into six major topic areas: the review and approval process; third party impacts; applicability of CVPIA to water transfers; transferable water; clarification of the right of first refusal; and area of origin. This paper is now going through final review in Washington and is expected to be released in the near future.

Copies of the 1993 CVPIA Water Transfer Guidelines and the 1996 Draft Administrative Proposal will be available at the March 18 Work Group meeting.